

**STATE OF TEXAS**

**RESOLUTION**

**of the**

**TEXAS JUDICIAL COUNCIL**

**Ensuring Adequate Court Funding**

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code; and

WHEREAS, the Council is charged with improving the administration of justice; and

WHEREAS, the Texas Constitution divides the powers of the government of the State of Texas into three distinct departments: the Legislative, Executive and Judicial Departments; and

WHEREAS, the Judiciary, having neither the “sword nor the purse,”<sup>1</sup> relies upon the legislative and executive branches to provide sufficient funding to carry out its constitutional and statutory purposes; and

WHEREAS, a strong judiciary able to uphold the rule of law is critical to attracting business growth and maintaining a prosperous state; and

WHEREAS, delayed justice costs Texas businesses and citizens money, while effective and efficient courts save taxpayers money; and

WHEREAS, state courts across the country have struggled to fulfill their constitutional and statutory roles during this economic downturn due to budget cuts; and

WHEREAS, the total state appropriations to the Judiciary represented 0.37% of the total state budget in the 2012-2013 biennium; and

WHEREAS, even while state appropriations to the Judiciary were reduced by 4.4% during the 2012-2013 biennium compared to the previous biennium, the Judiciary has increased efficiency and made significant technological improvements; and

WHEREAS, ensuring that an adequate level of funding is provided to the Judiciary is essential to promoting access to the courts for Texans to resolve their disputes and protect the citizenry from abuse of their individual rights; and

WHEREAS, the Judiciary must continue to utilize funding to improve the way it administers justice to better meet the needs of citizens and employers in Texas through innovation, education and technological advances;

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<sup>1</sup> Hamilton, Alexander. “Federalist #78.” *The Federalist*. (New York: Fine Creative Media)

NOW THEREFORE, BE IT RESOLVED that the Texas Judicial Council urges the Legislature and County Commissioners Courts to provide adequate funding to:

- (1) Fund basic civil legal services so that income is not a barrier to access to the courts;
- (2) Ensure that resources and equipment are available for courtroom security and officer safety to protect users of the court system and its employees;
- (3) Allow the Judiciary to implement and support technological solutions to improve the administration of justice;
- (4) Promote an efficient and effective Judiciary through judicial and court personnel training;
- (5) Ensure that the Judiciary is able to recruit and retain highly qualified employees;
- (6) Meet judicial workload need through the creation of new judgeships where necessary and the use of visiting judges;
- (7) Allow the Judiciary to support its constitutional and statutorily-mandated obligations; and
- (8) Ensure that other expenditures related to the Judiciary that are not operational costs of the courts do not impede the courts' ability to sufficiently fund operations.<sup>2</sup>

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Honorable Wallace B. Jefferson  
Chair, Texas Judicial Council

Contact: David Slayton  
Executive Director, Texas Judicial Council  
512-463-1625

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<sup>2</sup> Some courts have expressed concerns that indigent defense expenditures are made a part of the courts' operational budget. Consequently, if indigent defense expenditures, which are constitutionally and statutorily mandated, are placed in the courts' operational budget and they subsequently increase beyond the budgeted amount, those courts are often unable to fund basic court operational expenses, including personnel costs, office equipment leases and basic office supply costs.

**STATE OF TEXAS**

**RESOLUTION**

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**TEXAS JUDICIAL COUNCIL**

**Adequate Funding of the Court eFiling System**

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code; and

WHEREAS, the Council is charged with improving the administration of justice; and

WHEREAS, court electronic filing (“eFiling”) began in Texas in 2003 through the statewide portal; and

WHEREAS, 28 justice courts in 12 counties now provide for eFiling in their jurisdictions; and

WHEREAS, 80 district and county clerks in 52 counties covering over 80% of the state’s population now provide for eFiling in their jurisdictions; and

WHEREAS, 9 of the 14 intermediate courts of appeal now provide for eFiling in their jurisdictions; and

WHEREAS, the Supreme Court of Texas has mandated that attorneys utilize eFiling in their court; and

WHEREAS, the existing eFiling model requires attorneys and litigants to pay a user fee on each submitted document between \$8-\$18 as set by the Texas Department of Information Resources and the vendors; and

WHEREAS, the average civil case has ten documents filed, resulting in an average eFiling cost between \$80-\$180 per civil case; and

WHEREAS, the full implementation of eFiling in the courts will result in greater efficiency for attorneys, litigants, clerks and the courts; and

WHEREAS, a newly procured eFiling system by the Judiciary could provide for an eFiling system that does not require a per document or per transaction user fee; and

WHEREAS, a technology filing fee and court cost set by the Legislature and appropriated to the Office of Court Administration could provide for eFiling at no additional per transaction charge to litigants; and

WHEREAS, the expanded use of eFiling would promote the efficient administration of justice in Texas;

NOW THEREFORE, BE IT RESOLVED that the Texas Judicial Council recommends that the Texas Legislature:

- (1) establish a court technology fee in civil cases and a criminal court cost at the justice, county, district and appellate courts to cover the cost of eFiling; and
- (2) appropriate the revenue from the fee and court cost to the Office of Court Administration for the purposes of funding eFiling in Texas and related technology implementation costs.

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Honorable Wallace B. Jefferson  
Chair, Texas Judicial Council

Contact: David Slayton  
Executive Director, Texas Judicial Council  
512-463-1625

**STATE OF TEXAS**

**RESOLUTION**

**of the**

**TEXAS JUDICIAL COUNCIL**

**Additional State Funding for Indigent Defense**

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code;

WHEREAS, the Texas Indigent Defense Commission (Commission) is a permanent standing committee of the Texas Judicial Council, created under Chapter 79, Texas Government Code; and,

WHEREAS, the Commission is charged with promoting compliance by counties with the requirements of state law related to indigent defense pursuant to the *Fair Defense Act of 2001*; and,

WHEREAS, the Commission provides State funds through grants to counties that demonstrate a commitment to comply with the requirements of state law relating to indigent defense; and,

WHEREAS, the right to counsel is also guaranteed in both the Texas Constitution and the United States Constitution; and,

WHEREAS, the State funding through the Commission has directly led to improved compliance and innovations that enhance quality and effectiveness of indigent defense representation; and,

WHEREAS, ten people in Texas have been exonerated through Commission-funded innocence projects at the state's public law schools; and,

WHEREAS, thousands more Texans are now receiving constitutionally guaranteed defense representation as a result of more effective indigent defense delivery systems; and

WHEREAS, the overwhelming share of the increased indigent defense costs since the passage of *Fair Defense Act of 2001* has fallen upon counties; and,

WHEREAS, the overall costs expended by counties has increased by almost 120 percent; and,

WHEREAS, the underfunding of indigent defense can invite costly litigation; and,

WHEREAS, the Commission's Legislative Appropriation Request is directly related to closing the funding gap of the increased county costs not covered by Commission grants; and,

WHEREAS, population growth has exacerbated the funding gap and without new funding the State's share of indigent defense costs will continue to erode; and,

WHEREAS, the 82<sup>nd</sup> Legislature removed the Commission's estimated appropriation authority and unexpended balance authority between the biennia; and,

WHEREAS, more than \$7 million dollars sits in the Fair Defense Account, unavailable to help counties meet constitutional and statutory obligations to ensure access to counsel for indigent defendants; and,

WHEREAS, more than \$77 million per year in new money is needed to close the funding gap incurred by counties due to the mandates of the *Fair Defense Act of 2001*;

NOW THEREFORE, BE IT RESOLVED that the Texas Judicial Council recommends that the Texas Legislature:

- 1) Restore access to all dedicated funds for indigent defense by reinstating estimated appropriation authority and by reestablishing unexpended balance authority between biennia to the Commission; and,
- 2) Close the "unfunded" gap that is being borne by counties for the additional indigent defense costs that they have incurred due to the mandates of the *Fair Defense Act of 2001*.

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Honorable Wallace B. Jefferson  
Chair, Texas Judicial Council

Contact: Jim Bethke  
Executive Director, Texas Indigent Defense Commission  
512-936-6994

**STATE OF TEXAS**

**RESOLUTION**

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**TEXAS JUDICIAL COUNCIL**

**Vexatious Litigants**

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code; and

WHEREAS, the Council is charged with improving the administration of justice; and

WHEREAS, the Legislature created Chapter 11 of the Civil Practice and Remedies Code in 1997 to deal with the problem of vexatious litigants; and

WHEREAS, the statute's criteria for finding a litigant to be vexatious are very rigid; and

WHEREAS, the statute provides for two types of vexatious litigant declarations (one requiring security for costs and one requiring prefiling permission) that are often confused; and

WHEREAS, the statute provides for no model orders or pleadings and could be improved by providing greater direction to clerks, litigants, and the Office of Court Administration (OCA);

NOW THEREFORE, BE IT RESOLVED that the Texas Judicial Council recommends that the Texas Legislature replace the current vexatious litigant statute with a statute that:

- (1) gives courts more flexibility in finding a litigant to be vexatious;
- (2) eliminates the security for costs option and requires that prefiling orders apply to all courts;
- (3) provides for model orders and clarifies the duties of clerks and OCA;
- (4) details "special permission" procedures for vexatious litigants; and
- (5) expands judicial remedies to include injunctions and other relief.

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Honorable Wallace B. Jefferson  
Chair, Texas Judicial Council

Contact: Judy Speer-Gamino  
Assistant General Counsel, Office of Court Administration  
512-936-7061

## **Appendix A**

### **Background and Additional Information**

In 1997 the Legislature enacted a new chapter of the Civil Practice and Remedies Code – Chapter 11 – in an effort to protect courts and parties from vexatious litigants. Oftentimes, vexatious litigants will file hundreds of harassing, duplicative, or incomprehensible pleadings. Appellate courts and commentators have characterized the conduct of some vexatious litigants as “legal bullying” and as “an assault upon the judicial system.” The litigants’ conduct is marked by “a general disregard for decency and logic.” Litigation is used by them as “a cruel and effective weapon,” and the choice of targets often includes “anyone who has suffered the slightest contact” with the plaintiff. Vexatious litigants are contemptuous of rules and immune to most sanctions and are responsible for millions of dollars in losses attendant to the operation of the judicial system. Millions of dollars more in losses are suffered by those who are targeted.

Texas’ current statute is modeled after the California vexatious litigant statute. It establishes criteria for finding a person to be a vexatious litigant, which is based in part upon a showing that the plaintiff in the seven-year period preceding the motion to declare the plaintiff a vexatious litigant “commenced, prosecuted, or maintained in propria persona at least five litigations other than in a small claims court that have been: (A) finally determined adversely to the plaintiff; (B) permitted to remain pending at least two years without having been brought to trial or hearing; or, (C) determined by a trial or appellate court to be frivolous or groundless under state or federal laws or rules of procedure.” The statute provides for two primary forms of possible relief: (1) an order that the plaintiff furnish security in order to proceed with his or her current lawsuit; and (2) a prefiling order which requires the plaintiff to obtain permission from the local administrative judge before he or she can file any further lawsuit. The court specifies the geographic range of a prefiling order, in that such an order can apply to an individual court, all courts in a particular area, or to all courts in the state.

The current statute directs the Office of Court Administration (OCA) to maintain a list of vexatious litigants who are subject to prefiling orders. The number of litigants listed has continued to grow since the enactment of Chapter 11. The Office of Court Administration’s list of prefiling orders is based upon information provided by court clerks. Court clerks are required to forward to OCA a copy of each prefiling order within thirty (30) days of the order being signed. OCA maintains the list of prefiling orders on its website, which may be accessed at: <http://www.courts.state.tx.us/oca/vexatiouslitigants.asp>.

During the fifteen years since the original enactment of the statute, appellate cases have identified several aspects of the statute that warrant revision. In particular, it has become clear that the interplay between Subchapter B (determining a plaintiff to be a vexatious litigant and requesting security) and Subchapter C (prohibiting the filing of new litigation through a prefiling order) of the statute is one area of confusion for many litigants, attorneys, and judges.

The role and authority of OCA is also widely misunderstood by vexatious litigants. Specifically, vexatious litigants often contend that OCA has the authority, with no further court order, to remove an individual's name from the list.

Many litigants, attorneys, clerks, and judges are frustrated with the current statute's procedural scheme and its failure to provide effective consequences for violations committed by a vexatious litigant. Rules of court procedure and conduct establish boundaries that can be more effectively maintained when an individual is represented by an attorney. Because vexatious litigants are representing themselves, they are not vulnerable to many of the consequences that are typically used to address inappropriate and/or abusive litigation conduct. For example, an attorney who included racial or religious epithets, vituperation of court personnel, or knowingly false statements in pleadings would be subject to disciplinary action by the State Bar of Texas, which could include revocation of that attorney's license to practice law. Self-represented litigants are not subject to such sanctions.

A complete revision of the statute could resolve areas of confusion and provide a more efficient and effective statutory scheme for addressing the serious problems created by vexatious litigants.

The Ohio vexatious litigant statute provides an example of a conduct-based statute that could serve as a model for revisions to the Texas statute.

**STATE OF TEXAS**

**RESOLUTION**

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**TEXAS JUDICIAL COUNCIL**

**Collection of Fines and Court Costs after End of Community Supervision Period**

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code; and

WHEREAS, the Texas Judicial Council is charged with improving the administration of justice, and

WHEREAS, defendants who are placed on community supervision are “administratively released” upon the expiration of the community supervision period; and

WHEREAS, these administrative releases often take place even when defendants have not fully paid their court-ordered fine and court costs; and

WHEREAS, the attorney general has opined<sup>1</sup> that defendants are no longer responsible for paying fines and court costs once the community supervision period ends; and

WHEREAS, collections officials have followed the attorney general’s opinion and have not sought to collect fines and court costs from these defendants; and

WHEREAS, thousands of defendants have therefore been able to legally avoid paying court-ordered fines and court costs; and

WHEREAS, significant revenue from court costs and fines has been lost;

NOW THEREFORE, BE IT RESOLVED that the Texas Judicial Council recommends that the Texas Legislature amend the Code of Criminal Procedure to recognize that:

- (1) although paying fines and court costs may be a term of community supervision, the obligation to pay is independent of any community supervision order; and
- (2) a defendant’s obligation to pay fines and court costs extends beyond his or her period of community supervision.

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Honorable Wallace B. Jefferson  
Chair, Texas Judicial Council

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<sup>1</sup> Opinion GA-0413 (2006).

**STATE OF TEXAS**

**RESOLUTION**

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**TEXAS JUDICIAL COUNCIL**

**Assessment of Criminal Court Costs in Effect on the Date of Conviction**

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code; and

WHEREAS, the Council is charged with simplifying judicial procedure; and

WHEREAS, criminal defendants are ordered to pay court costs upon conviction; and

WHEREAS, the court costs assessed are those that were in effect on the date the offense was committed; and

WHEREAS, the court costs assessed are not necessarily those that are in effect on the date of the conviction; and

WHEREAS, determining the court costs that were in effect on the date of conviction is a difficult undertaking for the clerks who calculate costs; and

WHEREAS, court costs are not intended to be punitive; and

WHEREAS, court costs are intended to be a recoupment of the costs of judicial resources expended in connection with the trial of the case; and

WHEREAS, the costs of judicial resources to be recouped should be the costs incurred at the time of the conviction;

NOW THEREFORE, BE IT RESOLVED that the Texas Judicial Council recommends that the Texas Legislature:

- (1) repeal legislative provisions calling for the assessment of court costs on offenses committed on or after a certain date; and
- (2) enact legislation calling for the assessment of court costs in effect at the time of conviction.

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Honorable Wallace B. Jefferson  
Chair, Texas Judicial Council

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**TEXAS JUDICIAL COUNCIL**

**Single Effective Date for New Criminal Court Costs and Civil Filing Fees**

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code; and

WHEREAS, the Texas Judicial Council is charged with simplifying judicial procedure and expediting the transaction of judicial business; and

WHEREAS, Government Code § 51.607(c) concerns all new laws that impose or change the amount of a criminal court cost or a civil filing fee; and

WHEREAS, the statute generally makes all new or changed court costs and fees effective on January 1 after the law takes effect; and

WHEREAS, January 1 is the effective date for the new or changed cost or fee regardless of the effective date of the bill; and

WHEREAS, delaying the imposition of the cost or fee wisely gives courts adequate time to begin charging the new cost or fee; and

WHEREAS, Government Code § 51.607(d) provides exceptions to the general rule stated above that provide for earlier effective dates; and

WHEREAS, effective dates earlier than January 1 are difficult for courts to implement in a timely manner;

NOW THEREFORE, BE IT RESOLVED that the Texas Judicial Council recommends that the Texas Legislature repeal Government Code § 51.607(d).

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Honorable Wallace B. Jefferson  
Chair, Texas Judicial Council

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**Consistent Fee Amounts in Compliance Dismissals**

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code; and

WHEREAS, the Texas Judicial Council is charged with simplifying judicial procedures and expediting the transaction of judicial business; and

WHEREAS, persons charged with certain traffic-related offenses such as driving with an expired driver's license may act to have the charges dismissed; and

WHEREAS, dismissals can be obtained by remedying the defect (*e.g.*, renewing one's driver's license) within a certain time and paying an administrative fee; and

WHEREAS, such dismissals are informally known as "compliance dismissals;" and

WHEREAS, there are 14 offenses for which compliance dismissals are possible; and

WHEREAS, the amount of the administrative fee in these compliance dismissals varies from no fee to a fee of no more than \$20.00; and

WHEREAS, some of the compliance dismissal fees are optional and some are mandatory; and

WHEREAS, the differing amounts of these compliance dismissal fees results in confusion in the courts that handle compliance dismissals;

NOW THEREFORE, BE IT RESOLVED that the Texas Judicial Council recommends that the Texas Legislature set a \$20 mandatory fee for all compliance dismissals.

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Honorable Wallace B. Jefferson  
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**Interim Study on Criminal Court Cost Consolidation**

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code; and

WHEREAS, the Council is charged with simplifying judicial procedure; and

WHEREAS, the current criminal court cost statutes have given rise to a complicated system of assessing court costs; and

WHEREAS, there is general agreement among judges, clerks and others that a less complicated system would be desirable; and

WHEREAS, there is limited information available at this time to propose a simplified system that would ensure that the current recipients of criminal court cost revenue are not adversely impacted; and

WHEREAS, additional information and testimony from interested stakeholders might result in a proposal to simplify the criminal court cost system;

NOW THEREFORE, BE IT RESOLVED that the Texas Judicial Council recommends that the Texas Legislature create a legislative interim study committee to:

- (1) examine alternative ways to simplify criminal court costs; and
- (2) recommend simplifications to the current criminal court cost system.

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Chair, Texas Judicial Council

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**Judicial Compensation Commission Recommendations**

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code; and

WHEREAS, the Judicial Compensation Commission was created by the 80<sup>th</sup> Legislature to recommend the proper salaries to be paid by the state for all justices and judges of the Supreme Court, the Court of Criminal Appeals, the Courts of Appeals and the District Courts; and

WHEREAS, the Judicial Compensation Commission has studied judicial compensation in Texas and found a need for an increase in compensation; and

WHEREAS, the judges of Texas have not received an increase in compensation since 2005; and

WHEREAS, the salary of Texas' judges are now below compensation levels from 1991 when one factors in the consumer price index increase; and

WHEREAS, the proper compensation of Texas' justices is essential to attract qualified candidates and retain experienced judges who effectively administer justice;

NOW THEREFORE, BE IT RESOLVED that the Texas Judicial Council urges the Legislature to provide funding to increase state judicial compensation to the levels recommended by the Commission.

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Honorable Wallace B. Jefferson  
Chair, Texas Judicial Council

Contact: David Slayton  
Executive Director, Texas Judicial Council  
512-463-1625

**STATE OF TEXAS**

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**TEXAS JUDICIAL COUNCIL**

**Juvenile Justice Committee Recommendations**

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code; and

WHEREAS, the Council is charged with improving the administration of justice; and

WHEREAS, the problems with the adjudication of children for fine-only misdemeanors has been well-documented<sup>1</sup>; and

WHEREAS, children charged with fine-only misdemeanors are adjudicated in the criminal justice system while children charged with other misdemeanors and felonies are adjudicated in the juvenile justice system; and

WHEREAS, in his 2011 State of the Judiciary Address, Texas Supreme Court Chief Justice Wallace B. Jefferson called upon the Legislature to work to address the problems surrounding this issue; and

WHEREAS, in February 2012 this Council formed the Juvenile Justice Committee to “assess the impact of school discipline and school-based policing on referrals to the municipal, justice, and juvenile courts and identify judicial policies or initiatives that: work to reduce referrals without having a negative impact on school safety; limit recidivism; and preserve judicial resources for students who are in need of this type of intervention”; and

WHEREAS, the Juvenile Justice Committee, composed of judges, advocacy group representatives, educators, school police representatives and the public, has made recommendations for legislative changes that will address some of the issues involved with the adjudication of children for fine-only misdemeanors; and

WHEREAS, the Council believes that these legislative changes will result in meaningful change in curtailing the “school-to-prison pipeline” and will ensure equitable treatment for children who are adjudicated in the municipal and justice courts;

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<sup>1</sup> Tony Fabelo, et al., *Breaking Schools’ Rules: A statewide Study of How School Discipline Relates to Students’ Success and Juvenile Justice Involvement*. (New York: Council of State Governments Justice Center); Deborah Fowler, et al., *Texas’ School-to-Prison Pipeline: Dropout to Incarceration, The Impact of School Discipline and Zero Tolerance*. (Austin: Texas Appleseed).

NOW THEREFORE, BE IT RESOLVED that the Texas Judicial Council recommends that the Texas Legislature enact the following statutory changes:

- (1) Expressly authorize local governments to implement “deferred prosecution” measures in Class C misdemeanors to decrease the number of local filings from schools;
- (2) Amend applicable criminal laws to ensure that local courts are the last and not the first step in school discipline;
- (3) Amend offenses relating to Disruption of Class, Disruption of Transportation and Disorderly Conduct so that age, not grade level, is a prima facie element of the offense; and
- (4) Amend existing criminal laws and procedures to increase parity between “criminal juvenile justice in local trial courts” and “civil juvenile justice in juvenile court and juvenile probation.”

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Honorable Wallace B. Jefferson  
Chair, Texas Judicial Council

Contact: David Slayton  
Executive Director, Texas Judicial Council  
512-463-1625

**STATE OF TEXAS**

**RESOLUTION**

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**TEXAS JUDICIAL COUNCIL**

**Informing the Attorney General of Constitutional Challenges to Texas Statutes**

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code; and

WHEREAS, the Texas Judicial Council is charged with expediting the transaction of judicial business; and

WHEREAS, the 82<sup>nd</sup> Legislature created Section 402.010 of the Government Code in 2011; and

WHEREAS, the statute concerns legal actions challenging the constitutionality of a Texas statute; and

WHEREAS, the statute requires “the court” to serve notice of the constitutional question on the attorney general; and

WHEREAS, the statute requires “the court” to serve a copy of the petition, motion, or other pleading raising the constitutional challenge on the attorney general; and

WHEREAS, the term “the court” is generally interpreted to mean “the clerk of the court”; and

WHEREAS, it is difficult for clerks to comply with the statute’s directive due to resource limitations;

NOW THEREFORE, BE IT RESOLVED that the Texas Judicial Council recommends that the Texas Legislature amend the Government Code to:

- (1) remove the obligation on courts and clerks to report to the attorney general as described above; and
- (2) place that obligation on the party raising the constitutional question.

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Honorable Wallace B. Jefferson  
Chair, Texas Judicial Council

Contact: Ted Wood  
Assistant General Counsel, Office of Court Administration  
512-936-1183